

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF WEST VIRGINIA**

STEPHANIE ZIMMECK,

Plaintiff,

v.

MARSHALL UNIVERSITY BOARD OF  
GOVERNORS dba Marshall University, Joan C.  
Edwards School of Medicine; JOSEPH I.  
SHAPIRO, individually and as Dean of the  
Marshall University School of Medicine; AARON  
MCGUFFIN, individually and as Senior Associate  
Dean for Student Affairs; TRACY LEGROW,  
individually and as Assistant Dean for Academic  
Affairs; ROBERT C. NERHOOD, individually and  
as Interim Dean of Marshall University School of  
Medicine; MARIA VEITIA, individually and as  
Associate Dean for Student Affairs, inclusive,

Defendants.

3:13-cv-14743

**COMPLAINT**  
**(Jury Demanded)**

COMES NOW, Plaintiff, STEPHANIE ZIMMECK (hereinafter referred to as "Plaintiff"), by and through her attorney of record, JASON J. BACH, ESQ. of THE BACH LAW FIRM, LLC, and hereby complains and alleges against the above-named Defendants, and each of them, based upon knowledge, information and a reasonable belief derived therefrom, as follows:

**INTRODUCTION**

This is a Complaint for Damages and injunctive relief brought by a student of Marshall University, Joan C. Edwards School of Medicine. The claims, against the University and faculty of this public university, are based upon Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. Section 1983 and the Fourteenth Amendment of the United States Constitution, alleging denial of reasonable accommodations, infringement of Plaintiffs' right to substantive and procedural due process. Plaintiffs also rely on the Marshall University Student Handbook (Code of Student Rights and Responsibilities), the Student Impairment Assistance Policy, and the Marshall University Graduate Catalog and alleges a pendent breach of contract claim. Plaintiffs have also asserted a claim against University Defendant for

1 negligent hiring, training, and supervision, and all Defendants for intentional infliction of emotional  
2 distress.

3 **PARTIES & JURISDICTION**

4 1. This Court has jurisdiction over the claims set forth in this action pursuant to 28  
5 U.S.C. Section 1331 (federal question), 28 U.S.C. Section 1332 (diversity jurisdiction), and 28  
6 U.S.C. Section 1343 (civil rights).

7 2. Supplemental jurisdiction over Plaintiff's pendent state law claims is invoked  
8 pursuant to 28 U.S.C. Section 1367, as the claim arises out of the same transaction and occurrence  
9 as Plaintiff's federal claim.

10 3. Venue is proper in the Southern District of West Virginia pursuant to 28 U.S.C.  
11 1391(b) in that the claims arose in this district, and Plaintiff and Defendants are located in this  
12 district.

13 4. Costs, expert witness fees, and attorney's fees are sought pursuant to 42 U.S.C.  
14 Section 1988.

15 5. Plaintiff, STEPHANIE ZIMMECK, at all relevant times was a resident of the State  
16 of West Virginia or the Commonwealth of Virginia and was a student at Marshall University, Joan  
17 C. Edwards School of Medicine. She is currently a resident of the Commonwealth of Virginia.

18 6. Defendant, MARSHALL UNIVERSITY BOARD OF GOVERNORS dba Mashall  
19 University, Joan C. Edwards School of Medicine (hereinafter referred to as "MUSOM"), was and  
20 is a statutorily created public entity, with its principal offices located in Huntington, Cabell County,  
21 West Virginia and operates MUSOM, a public educational institution of higher learning, located  
22 in Huntington, Cabell County West Virginia.

23 7. Defendant JOSEPH I. SHAPIRO, at all times relevant was Dean of the Marshall  
24 University School of Medicine. He is named in this case both individually and in his official  
25 capacity as Dean of the Marshall University School of Medicine.

26 8. Defendant AARON MCGUFFIN, at all times relevant was Senior Associate Dean  
27 for Student Affairs at MUSOM. He is named in this case both individually and in his official  
28 capacity as Senior Associate Dean for Student Affairs at MUSOM.

1           9. Defendant TRACY LEGROW, at all times relevant was Associate Dean for  
2 Academic Affairs. She is named in this case both individually and in her official capacity as  
3 Associate Dean for Academic Affairs.

4           10. Defendant ROBERT C. NERHOOD, was Interim Dean of the Marshall University  
5 School of Medicine from July 2011 through June 2012. He is named in this case both individually  
6 and in his official capacity as Interim Dean of the Marshall University School of Medicine.

7           11. Defendant MARIA VEITIA, at all times relevant was Associate Dean for Student  
8 Affairs. She is named in this case both individually and in her official capacity as Associate Dean  
9 for Student Affairs.

10           12. Plaintiffs are informed and believe and thereon allege that there may be "Doe"  
11 defendants that are responsible in some manner for the events and happenings referred to in this  
12 action and proximately caused damages to Plaintiffs as herein alleged, and that Plaintiffs will ask  
13 leave of this Court to amend this Complaint, to insert the true names and capacities of said  
14 Defendants, and when the same have been ascertained to join such Defendants in this action.

15           13. At all times herein, the individual Defendants and the Defendant MUSOM, have been  
16 acting under color of law.

17           14. At all times relevant hereto, and in all their actions described herein, Defendants'  
18 actions took place in the State of West Virginia, County of Cabell.

19           15. Defendants, and each of them, did the acts and omissions hereinafter alleged in bad  
20 faith and with knowledge that their conduct violated well established and settled law.

21                           **GENERAL FACTUAL ALLEGATIONS**

22           16. In August 2009, Plaintiff, Stephanie Zimmeck, started medical school at Marshall  
23 University School of Medicine ("MUSOM"). Plaintiff successfully completed her first two years  
24 of the program.

25           17. On or about December 17, 2010, the Academic Standards Committee at MUSOM  
26 placed Plaintiff on academic probation for receiving a "U" interim grade after one semester of a full  
27 year Advanced Patient Care course. Plaintiff successfully passed the course at its conclusion in May  
28 2011. Yet, for some reason Plaintiff remained on academic probation.

1           18.     On or about May 27, 2011, Defendant, Aaron McGuffin, the Senior Associate Dean  
2     for Student Affairs, filed a "critical incident report" against Plaintiff and referred her to the  
3     Academic and Professional Standards Committee (APSC). Dr. McGuffin filed the report without  
4     prior notice to Plaintiff, for missing a NBME Step 1 practice examination. Plaintiff was unaware  
5     that the practice examination was mandatory and she fully resolved this issue with MUSOM.  
6     Plaintiff took responsibility for not knowing the practice examination was mandatory and for  
7     missing it. Plaintiff informed Dr. McGuffin that she would reschedule her official USMLE Step 1  
8     examination to take the NBME practice examination, which she did on June 17, 2011. Dr. McGuffin  
9     stated that Plaintiff had made the right and mature decision and gave the impression to Plaintiff that  
10    the matter was resolved.

11           19.     On August 26, 2011, Plaintiff took the official USMLE Step 1 examination, on which  
12    she scored in line with the average for all medical students in the United States.

13           20.     On October 7, 2011, Plaintiff was called to a meeting before the APSC. She was  
14    informed that the meeting was to discuss the May 27, 2011 "critical incident report" regarding her  
15    missing the May NBME Step 1 practice examination. As such, Plaintiff was prepared to discuss  
16    how she handled the report and that the matter was fully resolved per Dr. McGuffin.

17           21.     However, at the October 7, 2011 meeting the May 27, 2011 report was not discussed,  
18    rather, Plaintiff was interrogated by the committee regarding completely different issues or which  
19    she had no advance warning. One issue that was discussed was that in February 2010, during  
20    Plaintiff's first year of medical school, she discussed with Dr. Maria Veitia, the Associate Dean for  
21    Student Affairs, that she was having trouble adjusting to living in Huntington, WV. Dr. Veitia  
22    recommended that Plaintiff begin taking anti-depressant medication. The committee asked Plaintiff  
23    about her adjustment to living in West Virginia and also suggested that Plaintiff use anti-  
24    depressants. Although Plaintiff was not prepared to answer these types of questions as she had no  
25    notice that the committee would be asking her these types of questions, Plaintiff explained that she  
26    was now happy living in West Virginia and that she had begun taking Lexapro.

27           22.     On October 18, 2011, the APSC issued a letter to Plaintiff stating that based upon the  
28    October 7, 2011 meeting, she was to remain on academic probation. Even though Plaintiff was

1 never previously found responsible for any “professional misconduct”, the APSC stated that  
2 “Receipt of any incident report due to your professional misconduct will result in serious sanctions  
3 which can include suspension or possibly dismissal from the school of medicine.” This decision is  
4 a clear violation of MUSOM policy. The policy states that students may be placed on academic  
5 probation for failing to correct deficiencies or for not receiving a passing grade. Plaintiff had no  
6 outstanding or unresolved academic deficiencies, yet she remained on academic probation.

7 23. MUSOM unilaterally imposed sanctions against Plaintiff for unsupported allegations  
8 of “professional misconduct” by imposing a heavy burden upon her, which was not imposed on  
9 other students at the school of medicine, when the school said that she may be dismissed from the  
10 program for any further reports of professional misconduct when Plaintiff never even had a prior  
11 report of professional misconduct.

12 24. On November 8, 2011, Dr. Wesam Bolkhair submitted a report reporting alleged  
13 violations of standards of professionalism of Plaintiff that occurred between October 31, 2011 and  
14 November 7, 2011. As the Deans of the medical school were aware, Plaintiff was suffering from  
15 unexpected and severe side effects from taking the drug Lexapro during that time period.

16 25. Plaintiff immediately met with Defendant, LeGrow following Dr. Bolkhair’s report  
17 on November 9, 2011 and informed Dr. LeGrow that she was having suicidal ideations. Dr. LeGrow  
18 was also present at the APSC October 7, 2011 hearing when Plaintiff disclosed to MUSOM she had  
19 begun taking Lexapro.

20 26. On November 23, 2011, Plaintiff met with Dr. LeGrow, Dr. Bolkhair, and Dr. Larry  
21 Dial to establish an action plan to resolve the allegations in Dr. Bolkhair’s report. Plaintiff resumed  
22 her Internal Medicine rotation the following day. Even though MUSOM was aware that Plaintiff  
23 was on Lexapro and having suicidal ideations, they reinstated her in the Internal Medicine rotation.

24 27. According to the MUSOM Student Impairment Assistance Policy, “The SOM has  
25 the authority to remove a student from clinical responsibilities if there is evidence of potential  
26 impairment that may impact patient care or appropriate student performance.” MUSOM had  
27 knowledge that Plaintiff was impaired. MUSOM failed to follow their policy, thus putting Plaintiff  
28 and her patients in danger.



1           28.     Even though an action plan was in place regarding the November 8, 2011 report of  
2     Dr. Bolkhair, which Plaintiff was successfully progressing through, that Plaintiff was no longer taking  
3     Lexapro, and there were no further incidents or allegations of professional or academic misconduct,  
4     on December 13, 2011, Ms. Zimmeck was informed that the APSC was to meet on December 19,  
5     2011 to discuss the November 8, 2011 report.

6           29.     Plaintiff contacted Dr. LeGrow, who informed her that she did not need to be present  
7     at the meeting, that the meeting was a mere formality, and that she did not have to worry because  
8     she already had worked with MUSOM to develop an action plan to resolve the issues. As a result,  
9     Plaintiff was not present to defend herself or to respond to any questions from the committee.  
10    Nonetheless, Plaintiff informed MUSOM that she was available by phone to participate in the  
11    meeting. Plaintiff was never contacted during the meeting.

12          30.     On December 28, 2011, Ms. Zimmeck was informed that the APSC recommended  
13    that she be dismissed from MUSOM as a result of the November 8, 2011 report of Dr. Bolkhair and  
14    the decisions from the December 19, 2011 hearing, in which Plaintiff was not even allowed to  
15    participate or defend herself. These actions are egregious and in direct violation of Plaintiff's due  
16    process and equal protection rights as she was subject to a higher standard regarding "professional  
17    misconduct" than her classmates and she was not afforded *any* sort of hearing or opportunity to  
18    defend herself from the allegations against her.

19          31.     Plaintiff exhausted her administrative remedies by timely appealing the decision to  
20    dismiss her from MUSOM. On January 9, 2012, the Appeals Sub-Committee of the Dean's  
21    Advisory Committee conducted a meeting and upheld the decision of dismissal. Once again,  
22    Plaintiff was not permitted to attend the meeting and was again denied the opportunity to defend  
23    herself.

24          32.     These egregious actions on the part of MUSOM are especially troublesome in light  
25    of the Liaison Committee of Medical Education's (LCME) June 2011 report that found that  
26    MUSOM exhibited the inability to provide emotional support to its students. Despite the  
27    administration, composed of medical doctors', knowledge of the medication Plaintiff was taking,  
28    she was not offered a shred of support or understanding from the physician administration, who

1 should have recognized the potential problems that could be caused by a student taking Lexapro.  
2 In fact, the administration did not even take that fact into consideration in dismissing Plaintiff from  
3 MUSOM, another violation of the MUSOM policy.

4 33. Section 504 of the Rehabilitation Act of 1973 MUSOM from discriminating against  
5 students, or prospective students, with a qualified disability. Plaintiff provided MUSOM with  
6 sufficient information as early as February 2010 in her meeting with Dr. Veitia, that she has  
7 disabilities, namely, ADHD and depression, which substantially limit her time management skills  
8 and her ability to adjust to a new living environment, and qualifies her under Section 504. 34 C.F.R.  
9 § 104.3.

10 34. Federal law dictates that Ms. Plaintiff is entitled to various “academic adjustments”  
11 to ensure that she is not discriminated against, based upon her disabilities. 34 C.F.R. § 104.44.  
12 These adjustments can include substitution of specific courses required to complete a degree  
13 program, and modification “of the manner in which specific courses are conducted.” 34 C.F.R. §  
14 104.44(a). Section 504 also requires that a college or university modify how they evaluate academic  
15 achievement of a student with disabilities. 34 C.F.R. § 104.44(c).

16 35. The accommodations that could have been provided to Plaintiff were minimal and  
17 were necessary for Plaintiff to progress through the program, but were not provided to her. As a  
18 result of Plaintiff not being provided reasonable accommodations, she was put at a substantial  
19 disadvantage from other students, and was ultimately dismissed from the program.

20 36. The decisions made by Defendants to remove Plaintiff from the university are  
21 arbitrary and capricious in nature, are in violation of MUSOM’s Student Rules and Regulations, and  
22 in violation of Plaintiff’s U.S. Constitutional Rights.

23 37. As a result of Defendants’ arbitrary, capricious, and unlawful actions, Plaintiff has  
24 been prevented from attending classes at MUSOM, thus halting and destroying her ability to attend  
25 medical school or to ever enter the medical profession.

26 38. As a result of the above, Defendants, and each of them, have wrongly caused Plaintiff  
27 to be sanctioned and removed from MUSOM and for the above-noted sanctions to be wrongly  
28 placed on her record, all in violation of her U.S. Constitutional Rights, depriving her of the

1 opportunity to obtain an education and further her career, and inflicting emotional distress and  
2 physical injury, all damaging Plaintiff in an amount in excess of Seventy Five Thousand Dollars  
3 (\$75,000.00).

4 39. The harm caused by Defendants is irreparable and can only be mitigated by the  
5 reinstatement of Plaintiff in the good standing in the medical school so that she may transfer in  
6 advanced standing to an alternative medical school. We also ask that she be placed on voluntary  
7 medical leave, any notation in her academic record that reflects a dismissal is removed, and  
8 prohibiting Defendants from further interfering with Plaintiffs' educational future.

9 **FIRST CAUSE OF ACTION**

10 ***VIOLATION OF SECTION 504 OF THE REHABILITATION ACT OF 1973,***

11 ***29 U.S.C. §701, et seq.***

12 40. Plaintiff repeats and realleges each and every allegation made in the foregoing  
13 paragraphs as if fully set forth herein.

14 41. Plaintiff is a qualified individual with a disability, as defined by Section 504 of the  
15 Rehabilitation Act of 1973, 29 U.S.C. § 705(20).

16 42. Defendant, MUSOM, receives federal financial assistance, as defined by 29 U.S.C.  
17 §794, and, as such, may not discriminate against a person because of her disability.

18 43. Despite Plaintiff's requests for reasonable accommodations, Defendants have refused  
19 to provide them.

20 44. Solely by reason of his disability, Plaintiff was excluded from the participation in,  
21 denied the benefits of, subjected to discrimination, exploitation and a hostile educational  
22 environment at the University, such acts and omissions violating the Rehabilitation Act thereby.

23 45. MUSOM exercised bad faith in failing to provide appropriate and necessary  
24 accommodations and modifications to Plaintiff, so that she could continue in her educational  
25 program, a violation of the Rehabilitation Act thereby.

26 46. In addition, and in the alternative to the above-noted violation of the Rehabilitation  
27  
28



1 Act, the University also violated the Act when retaliating against Plaintiff when she began to  
2 advocate for her rights pursuant to the Act.

3 47. Such acts, omissions and failures by the University proximately caused injuries to  
4 Zimmeck.

5  
6 48. Defendants, and each of them, have wrongly caused Plaintiff to be discriminated  
7 against, denied reasonable accommodations, harassed and retaliated against, forcibly withdrawn  
8 from the program, all in violation of her rights pursuant to Section 504 of the Rehabilitation Act of  
9 1973, depriving her of the opportunity to complete her education and further her career, and  
10 inflicting emotional distress and physical injury, all to her damage in an amount in excess of Seventy  
11 Five Thousand Dollars (\$75,000.00).

12 49. It has been necessary for the Plaintiff to obtain the services of an attorney to  
13 prosecute this action and Plaintiff is entitled to an award of attorney's fees and costs of suit incurred  
14 herein.

15 50. Plaintiff is entitled to injunctive and declaratory relief to obtain the reasonable  
16 accommodations, as permitted under the statute, to allow her immediate access and participation in  
17 this public education program.

18 **SECOND CAUSE OF ACTION**

19 ***VIOLATION OF TITLE II OF THE AMERICANS WITH DISABILITIES ACT (ADA), 42***

20 ***U.S.C. §12101, et seq.***

21 51. Plaintiff repeats and realleges each and every allegation made in the foregoing  
22 paragraphs as if fully set forth herein.

23 52. Plaintiff is a "qualified individual with a disability," as defined in 42 U.S.C. §  
24 12131(2).

25 53. MUSOM is considered a "public entity," as defined in 42 U.S.C. § 12131(1), and  
26 each receives federal financial assistance so as to be covered by the mandate of the ADA.

27  
28 54. The University is a facility, the operation of which constitutes a program and services  
for ADA purposes.

1           55.     MUSOM failed and refused to reasonably accommodate Plaintiff in violation of Title  
2     II of the ADA. Such failures caused injuries to Plaintiff.

3           56.     MUSOM failed and refused to reasonably modify its services in violation of Title II  
4     of the ADA. Such failures proximately caused injuries to Plaintiff.

5           57.     Defendants, and each of them, have wrongly caused Plaintiff to be discriminated  
6     against, denied reasonable accommodations, harassed and retaliated against, forcibly withdrawn  
7     from the program, all in violation of her rights pursuant to the ADA, depriving her of the opportunity  
8     to complete her education and further her career, and inflicting emotional distress and physical  
9     injury, all to her damage in an amount in excess of Seventy Five Thousand Dollars (\$75,000.00).  
10     

11          58.     The acts, conduct and behavior of each of the individual Defendants were performed  
12     knowingly, intentionally, oppressively, and maliciously, by reason of which Plaintiff is entitled to  
13     punitive damages in a sum in excess of Seventy Five Thousand Dollars (\$75,000.00).

14          59.     It has been necessary for the Plaintiff to obtain the services of an attorney to  
15     prosecute this action and Plaintiff is entitled to an award of attorney's fees and costs of suit incurred  
16     herein.

17          60.     Plaintiff is entitled to injunctive and declaratory relief to obtain the physical and  
18     programmatic accessibility, as permitted under the statute, to allow her immediate access and  
19     participation in this public education program.

20                   **THIRD CAUSE OF ACTION**

21                   ***CIVIL RIGHTS VIOLATION, 42 U.S.C. §1983, PROCEDURAL DUE PROCESS***

22          61.     Plaintiff repeats and realleges each and every allegation made in the foregoing  
23     paragraphs as if fully set forth herein.

24          62.     That Plaintiff has a clearly established right to equal access to all benefits and  
25     privileges of a public higher education and a right to be free from said illegal practices and policies.

26          63.     MUSOM failed to comply with its own policies and due process protections by  
27     placing unreasonable and unnecessary conditions on Plaintiff to continue her education, which were  
28     contrary to MUSOM policy, including: (1) placing Plaintiff on academic probation despite the fact

1 that she was in good academic standing and she had never failed to correct deficiencies or receive  
2 a passing grade; (2) imposing sanctions against Plaintiff for unsupported allegations of “professional  
3 misconduct” when she had never received a prior report of professional misconduct; (3) failing to  
4 allow Plaintiff to be present at the December 19, 2011 ASPC meeting to defend herself or to respond  
5 to any questions from the committee; (4) dismissing Plaintiff from MUSOM without any notice or  
6 any opportunity for a hearing based upon a November 8, 2011 report of Dr. Bolkhair regarding  
7 allegations of misconduct; (5) dismissing Plaintiff from MUSOM based upon the Dr. Bolkhair report,  
8 after Plaintiff had already met with MUSOM administration to establish an action plan to resolve  
9 the allegations in Dr. Bolkhair’s report and was progressing through the action plan without further  
10 incident.

11 64. Defendants failed to allow Plaintiff a hearing, to be present and defend herself from  
12 the allegations against her, to confront the witnesses against her or to address any of evidence  
13 presented against her with regard to her dismissal.

14 65. As a result of Defendants’ actions, deliberate indifference to and/or reckless disregard  
15 for the constitutional rights of Plaintiff, she has suffered and continues to suffer a deprivation of her  
16 rights, privileges and immunities secured to her by the Fourteenth Amendment to the United States  
17 Constitution, and is thus entitled to an award of monetary damages from the individual Defendants.

18 66. That by reason of the aforesaid actions, Plaintiff is entitled to a Permanent Injunction  
19 requiring all Defendants, or their agents, to cease all unlawful and unconstitutional acts that they  
20 currently engage in.

21 67. The acts, conduct and behavior of each of the individual Defendants were performed  
22 knowingly, intentionally, oppressively, and maliciously, by reason of which Plaintiff is entitled to  
23 punitive damages.

24 68. It has been necessary for the Plaintiff to obtain the services of an attorney to  
25 prosecute this action and Plaintiff is entitled to an award of attorney’s fees and costs of suit incurred  
26 herein.

27 **FOURTH CAUSE OF ACTION**

28 ***CIVIL RIGHTS VIOLATION 42 U.S.C. §1983, SUBSTANTIVE DUE PROCESS***

1           69. Plaintiff incorporates by reference all the above related paragraphs with the same  
2 force and effect as if herein set forth.

3           70. That Plaintiff has a clearly established right to equal access to all benefits and  
4 privileges of a public higher education and a right to be free from said illegal practices and policies.

5           71. The actions of the Defendants, as described above, were arbitrary and capricious, and  
6 were not rationally related to any legitimate interest.

7           72. As a result of Defendants' actions, Plaintiff suffered and continues to suffer a  
8 deprivation of her rights, privileges and immunities secured to her by the Fourteenth Amendment  
9 to the United States Constitution, and is thus entitled to an award of monetary damages from the  
10 individual Defendants.

11           73. That by reason of the aforesaid actions, Plaintiff is entitled to a Permanent Injunction  
12 requiring all Defendants, or their agents, to cease all unlawful and unconstitutional acts that they  
13 currently engage in.

14           74. The acts, conduct and behavior of each of the individual Defendants were performed  
15 knowingly, intentionally, oppressively, and maliciously, by reason of which Plaintiff is entitled to  
16 punitive damages.

17           75. It has been necessary for Plaintiff to obtain the services of an attorney to prosecute  
18 this action, and Plaintiff is entitled to an award of attorney's fees and costs of suit incurred herein.

19                           **FIFTH CAUSE OF ACTION**

20                           ***CIVIL RIGHTS VIOLATION 42 U.S.C. §1983, EQUAL PROTECTION***

21           76. Plaintiff incorporates by reference all the above related paragraphs with the same  
22 force and effect as if herein set forth.

23           77. That the above actions by Defendants have resulted in the denial of equal protection  
24 rights, as a "class of one," all in violation of the Fourteenth Amendment to the United States  
25 Constitution, as Plaintiff was retaliated against, harassed, disciplined against, intimidated, and  
26 dismissed from the medical school, all against her will, and differently than those similarly situated  
27 medical students.

28           78. That the actions of Defendants were the result of personal animus against the

1 Plaintiff, and said actions and denials were taken without any rational basis.

2 79. That by reason of the aforesaid actions, Defendants' actions exhibit deliberate  
3 indifference to and/or reckless disregard for the constitutional rights of Plaintiff and other similarly  
4 situated students, all in violation of her constitutional rights.

5 80. As a result of Defendants' actions, Plaintiff suffered and continues to suffer a  
6 deprivation of her rights, privileges and immunities secured to her by the Fourteenth Amendment  
7 to the United States Constitution, and is thus entitled to an award of monetary damages from the  
8 individual Defendants.

9 81. That by reason of the aforesaid actions, Plaintiff is entitled to a Permanent Injunction  
10 requiring all Defendants, or their agents, to cease all unlawful and unconstitutional acts that they  
11 currently engage in.

12 82. The acts, conduct and behavior of each of the individual Defendants was performed  
13 knowingly, intentionally, oppressively, and maliciously, by reason of which Plaintiff is entitled to  
14 punitive damages.

15 83. It has been necessary for Plaintiff to obtain the services of an attorney to prosecute  
16 this action, and Plaintiff is entitled to an award of attorney's fees and costs of suit incurred herein.

17 **SIXTH CAUSE OF ACTION**

18 ***BREACH OF CONTRACT***

19 84. Plaintiff repeats and realleges each and every allegation made in the foregoing  
20 paragraphs as if fully set forth herein.

21 85. Plaintiffs has an express and implied contract with MUSOM in connection with rights  
22 explicitly guaranteed by MUSOM pursuant to the Marshall University Student Handbook (Code of  
23 Student Rights and Responsibilities); the Student Impairment Assistance Policy, and the Marshall  
24 University Graduate Catalog.

25 86. The actions of MUSOM, including but not limited to Defendant's discrimination,  
26 denial of reasonable accommodations, physical and programmatic accessibility, harassment,  
27 retaliation, the forcible withdrawal from the program, failure to provide adequate, process each  
28 constitute a breach of the express and implied contract.



1           87. As a result of the breach committed against Plaintiff, she has been damaged in an  
2 amount in excess of Seventy Five Thousand Dollars (\$75,000.00).

3           88. It has been necessary for Plaintiff to obtain the services of an attorney to prosecute  
4 this action, and Zimmeck is entitled to an award of attorney's fees and costs of suit incurred herein.

5  
6                                   **SEVENTH CAUSE OF ACTION**

7                                   ***NEGLIGENT HIRING, TRAINING, & SUPERVISION***

8           89. Plaintiff repeats and realleges each and every allegation made in the foregoing  
9 paragraphs as if fully set forth herein.

10           90. At all times material and relevant herein, MUSOM had a duty of reasonable care to  
11 its students.

12           91. At all times relevant herein, MUSOM had a duty not to hire individuals with a  
13 propensity towards committing unlawful acts against those who lawfully go about their business and  
14 to adequately train and supervise their agents, officers, and employees.

15  
16           92. At all times relevant herein, MUSOM had a duty to protect the public, such as  
17 Plaintiff, from the illegal actions of their own agents, officers, employees and others. In addition,  
18 MUSOM had a duty not to hire individuals with a propensity towards committing unlawful acts  
19 against the public, and to adequately train and supervise their employees.

20           93. Likewise, at all times relevant herein, MUSOM had a duty not to hire individuals  
21 with a propensity towards committing unlawful acts against those who lawfully go about their  
22 business and to adequately train and supervise their agents, officers, and employees.

23  
24           94. Defendant breached its duty, and is therefore negligent and liable to Plaintiff, who  
25 has suffered serious economic loss, loss of tuition, loss of reputation, loss of daily and future  
26 income, and to incur severe financial obligations in order to retain attorneys, as well as other painful  
27 injuries, deprivation of her liberty, invasion of his privacy, grievous mental suffering, all to her  
28 damage in an amount in excess of Seventy-five Thousand Dollars (\$75,000.00).

1           95. It has been necessary for Plaintiff to obtain the services of an attorney to prosecute  
2 this action, and Plaintiff is entitled to an award of attorney's fees and costs of suit incurred herein.

3                                   **EIGHTH CAUSE OF ACTION**

4                                   ***INTENTIONAL INFLICTION OF SEVERE MENTAL DISTRESS***

5           96. Plaintiff incorporates by reference all the above related paragraphs with the same  
6 force and effect as if herein set forth.

7  
8           97. As a result of Defendants' intentional and negligent conduct and omissions, which  
9 constitute extreme and outrageous behavior, Plaintiff suffered and continues to suffer great mental  
10 and emotional harm, anguish, insecurity, self-revulsion, damage to her self-esteem and self-worth,  
11 shame and humiliation.

12           98. Plaintiff has required medical and/or psychological care as result of the malfeasance  
13 and nonfeasance of Defendants. This has caused Plaintiff to incur expenses for medical care,  
14 treatment, and expenses incidental thereto. The total amount of Plaintiff's damages cannot yet be  
15 fully ascertained and, as such, Plaintiff respectfully asks leave of this Court to amend this Complaint  
16 to insert the full amount when such have been fully ascertained.

17  
18           99. As a result of the mental distress described above, Plaintiff has suffered serious  
19 psychological injury, loss of community reputation, medical expenses, and to incur severe financial  
20 obligations in order to retain attorneys to seek redress against the unlawful conduct of the  
21 Defendants, as well as grievous mental suffering, all to her damage in an amount in excess of  
22 Seventy Five Thousand Dollars (\$75,000.00).

23           100. The acts, conduct and behavior of the Defendants were performed willfully,  
24 intentionally, oppressively, fraudulently and maliciously, by reason of which Plaintiff is entitled to  
25 punitive damages in a sum in excess of Seventy Five Thousand Dollars (\$75,000.00).

26  
27           101. It has been necessary for Plaintiff to obtain the services of an attorney to prosecute  
28 this action, and Plaintiff is entitled to an award of attorney's fees and costs of suit incurred herein.

**DEMAND FOR A JURY TRIAL**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a jury trial for all issues in this matter.

**WHEREFORE**, Plaintiff prays that this Honorable Court: Enter judgment in Plaintiffs' favor, and against the Defendants, and each of them: (a) for compensatory damages in an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00); (b) for punitive damages each in an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00); (c) for injunctive and declaratory relief; (d) for interest; and (d) together with the costs and disbursements of this action and such other attorney's fees pursuant to 42 U.S.C. §1988, 42 U.S.C. §2000d, *et. seq*, and further relief as justice requires.

DATED this 18<sup>th</sup> day of June, 2013.

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